



LAW COMMISSION
OF INDIA

NINETEENTH REPORT

(THE ADMINISTRATOR GENERAL'S ACT, 1913)

May, 1961.

GOVERNMENT OF INDIA : MINISTRY OF LAW

CHAIRMAN,
LAW COMMISSION.
New Delhi—3,
June 19th, 1961.

Shri Asoke Kumar Sen,
Minister of Law,
New Delhi.

MY DEAR MINISTER,

I have great pleasure in forwarding herewith the Nineteenth Report of the Law Commission on the Administrator-General's Act.

2. The Administrator-General's Act, 1913, was taken up for revision by the previous Commission, but it was left unfinished. When the present Commission was constituted, the subject was again taken up and entrusted to Shri P. Satyanarayana Rao. A draft Report prepared by him was considered at the meeting of the Commission held on the 19th March, 1960. It was further discussed at a meeting of full time Members on the 12th May, 1960, and the draft Report revised. The revised draft Report was again considered by the Commission at its meeting held on the 19th August, 1960, and it was decided that the draft as revised by the Commission should be circulated for opinion to the State Governments, High Courts, Bar Associations and other bodies and persons interested in the subject. The comments received from them were considered by the Commission at a meeting held on the 18th February, 1961, and the draft Report was revised and finalised. The Report has been drawn up in accordance with the decisions taken at that meeting.

3. The Commission desires to express its appreciation of the services rendered by Shri D. Basu, Joint Secretary, and by Shri P. M. Bakshi, Deputy Draftsman, in the preparation of the Report and the Bill.

Yours sincerely,
T. L. VENKATARAMA AIYAR.

REPORT ON THE ADMINISTRATOR-GENERAL'S ACT, 1913

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REPORT ON THE ADMINISTRATOR-GENERAL'S ACT, 1913

PART I

GENERAL

1. In the ultimate analysis the office of the Administrator-General can be traced back to the Charter creating the Supreme Court of Judicature at Fort William and more particularly to the office of the Ecclesiastical Registrar. In its present name and form it was constituted only in 1849 by the Administrator-General's Act¹ of that year. The chief purpose in creating the office was to protect effectively the interests of the mercantile and trading communities of the East India Company. The functions of the said office have been developed and regulated on the lines which experience has shown to be sound. It is needless to narrate in detail the history of this office and the various Acts which preceded the Act of 1913. They will be found to have been dealt with comprehensively by Kinney.²

Historical background.

2. The events leading up to the passing of the present Administrator-General's Act may be briefly stated. The principal Act relating to Administrators-General then in force was the Act of 1874. Great changes had taken place since that Act was enacted. The Society had advanced with rapid strides and there was a clear need for amending the law so as to suit the changing circumstances. Several representations had, from time to time, been made for amending certain provisions of the Act. Excepting for a few amendments not much was done to bring the Act up to date. Even from the strictly technical point of view the Act was felt to be out of harmony with the changed modes of legislation. The question of passing a comprehensive measure was taken up by the Government of India in the year 1911 when Mr. Sanders, who was the Administrator-General and Official Trustee of Bombay, was deputed to enquire and report on the whole question. After consideration of the report and the opinions of local Governments and various officials the Government introduced in 1912 the Bill which was ultimately enacted with some changes as the Administrator-General's Act, 1913.

Events leading to the passing of the Administrator-General's Act, 1913.

3. Though the Act as originally passed was mainly intended to apply to the three Presidency-towns and to give larger protection to non-exempted persons, that is Europeans, its scope has since been enlarged. In Part II of the Act provision is made for the appointment of an Administrator-General for each State. The

Scheme of the Administrator-General's Act, 1913.

¹Act 8 of 1849.

²Kinney : Law relating to Administrators-General and Official Trustees, Part I, Introduction. p.i, et seq.

Government is also empowered to appoint a Deputy or Deputies to assist the Administrator-General. Following the example of Public Trustee Act, 1906 (of England), the Administrator-General has been constituted a corporation sole with perpetual succession and official seal and with capacity to sue and be sued in the corporate name.

Part III (sections 6 to 41) of the Act deals with the rights, powers, duties and liabilities of the Administrator-General under the following heads; (a) grants of letters of administration and probate (sections 6 to 14); (b) estates of persons subject to the Army Act etc. (sections 15 to 17); (c) revocation of grants (sections 18 to 21); (d) General (sections 22 to 30); (e) Grant of certificates (sections 31 to 38); (f) Liability (sections 39 to 41).

Part IV deals with fees (sections 42 and 43) whilst Part V deals with audit (sections 44 to 47). Part VI contains miscellaneous provisions (sections 48 to 60).

Grant of
Letters of
Administration
(ss. 6 to 8).

4. In order to appreciate the rights and duties of the Administrator-General to obtain letters of administration, it is necessary to refer to the important division under the Act of persons into two categories (1) exempted persons, which means an Indian Christian, a Hindu, Mohammadan, Parsi or Buddhist, or a person exempted under section 332 of the Indian Succession Act, 1865 (now section 3 of the Indian Succession Act, 1925) and (2) persons not so exempted. Under section 6 provision is made to the effect that the High Court shall be deemed to be a court of competent jurisdiction so far as regards the Administrator-General for the purpose of granting probate or letters of administration. The Administrator-General is entitled to priority to obtain letters of administration to the extent provided by sections 7 and 8. "Letters of Administration" is defined in the Act as including not only letters of administration which could be obtained in the case of intestate succession but also letters of administration with a copy of the will annexed or limited in time or otherwise.

When Ad-
ministrator-
General may
obtain grant
(ss. 9, 10, 11).

5. Sections 9, 10 and 11 are very important. Section 9 applies to persons who are not exempted, that is primarily Europeans. Under this provision if a non-exempted person dies leaving within any State assets exceeding the value of two thousand rupees and if no person to whom any Court would have jurisdiction to commit administration of such assets has, within one month after his death, applied in such State for probate of his will or for letters of administration of his estate, the Administrator-General of the State in which the assets are, has to take proceedings within a reasonable time to obtain from the High Court letters of administration of the estate of such person. This section, it will be noticed, is not restricted to the ordinary original jurisdiction of the High Court, but extends to the entire State, in which the

assets of a deceased non-exempted person are left. This section is closely connected with section 54.

6. Sections 10 and 11 may be considered together, as they are closely connected with each other. They apply to any person who dies leaving assets within the local limits of the ordinary original civil jurisdiction of the High Court at a Presidency-town. It may become necessary to take immediate action to protect the assets from the danger of deterioration or waste before the determination of the person who is legally entitled to the properties or even where there is doubt whether the Administrator-General is entitled to letters of administration. In such an event the High Court is empowered under section 11 to direct the Administrator-General to collect and take possession of the assets. Such an order entitles the Administrator-General to take the necessary proceedings in respect of such properties including, if he so chooses, proceedings for obtaining letters of administration. Section 10 also applies to any person who dies leaving assets within the local limits of the ordinary original civil jurisdiction of a High Court. When on the application of the Administrator-General or of any person interested in the assets or in the due administration thereof, the High Court is satisfied that danger is to be apprehended of misappropriation, deterioration or waste of such assets, it may direct the Administrator-General to apply for letters of administration. The court may grant letters of administration unless the application is in respect of the estate of an exempted person and the court is satisfied that such grant is unnecessary for the protection of the assets. The substantial difference between sections 10 and 11 is that under the latter the court is empowered to direct the Administrator-General to collect and hold assets pending the determination of the right of succession or administration.

7. It will thus be seen, that whilst section 9 is intended to apply exclusively to non-exempted persons, sections 10 and 11 are intended to apply exclusively to assets left within the local limits of the ordinary original civil jurisdiction of the High Court. It may be pointed out in this connection that the only High Courts which have ordinary original civil jurisdiction are those of Calcutta, Madras and Bombay.¹ In short, where the deceased is an exempted person and has not left any assets within the limits of the ordinary original civil jurisdiction of the three High Courts mentioned,

¹The framers of the Act did not make any provision adapting the provisions of sections 10 and 11 in respect of Provinces which the Governor-General in Council was empowered to create by section 58 and provided in section 3 that the Provincial Government may appoint in each Province an Administrator-General. The Adaptations of Laws Order, 1950, introduced the new terminology of "State" and "State Governments". Sections 10 and 11 have however been left intact.

the provisions of sections 9, 10 or 11 can have no application.

8. The Indian Succession Act, 1925, contains some provisions¹ for protecting the property of a deceased person, but these are of a more restricted character and are inadequate as they do not enable the District Judge to administer the properties.

9. We are of the opinion that since the object of the Administrator-General's Act is essentially to protect the property of a deceased person from being misappropriated or wasted, the availability of the protection should not be made dependent on such consideration as whether the person is an exempted person or not or whether the property is situated in one place or the other. In the changed context of the present set-up of States and the constitutional provisions as to uniformity of laws and equality of treatment, such distinctions are not only out of tune with the present conditions, but also liable to be attacked as discriminatory. It is high time that we freed the law relating to Administrators-General from the anomalous distinctions between Presidency-towns and Muffassil, which owe their origin to historical reasons, as also from the discrimination in favour of the so-called "non-exempted" persons, which has its origin in political consideration, and determined its content solely with reference to the need for protection and due administration of estates of deceased persons. We accordingly recommend that sections 9, 10 and 11 should be re-drafted with a view to securing the advantages of these provisions in all cases in which the same are necessary.

10. We recommend that in re-drafting the provisions the following considerations should be borne in mind:—

(1) The apprehension of danger of misappropriation, deterioration or waste of the assets or the desirability of taking proceedings for protection of the estate should be the main consideration for the Administrator-General to intervene.

(2) The provisions should not be applicable to small estates in respect of which the Administrator-General can issue certificates.²

(3) We should not indirectly make it obligatory for persons to obtain probate or letters of administration with the will annexed or letters of administration in general, except in cases in which it is made obligatory under the provisions of the Succession Act, Part VIII. Accordingly, cases where a person has taken other proceedings for protection of the estate should, if the obtaining of

¹Sections 192 to 201, 253 and 269.

²Under section 31, we have elsewhere recommended that the limit may be raised from Rs. 2,000 to Rs. 5,000.

probate, etc. is not obligatory, be treated on the same footing as if he had obtained probate, etc.

(4) Provision should be made, as under the existing section 11, to enable the Administrator-General to take possession of the property under the directions of the High Court where the High Court is satisfied that there is imminent danger of misappropriation, deterioration or waste of such assets requiring immediate action.

(5) Intervention by the Administrator-General should be optional, not compulsory. This is necessary in view of the proposed widening¹ of the applicability of the provisions under consideration.

Any consequential changes which have to be made in the other sections of the Act in view of the changes proposed above, may also be made.

11. In passing, it may be pointed out, that under section 6 the High Court is a competent court for the purpose of granting letters of administration as regards the Administrator-General, and hence in all the cases which will come, as a result of the proposed changes, within the purview of the Administrator-General, he may apply to the High Court for letters of administration. Thus the obtaining of letters of administration will be more speedy and the protection afforded will be complete.

12. The changes which we have proposed above are of a fundamental character in as much as they modify the basic approach of the Act. Besides, we have recommended a number of changes in the notes on particular sections. In view of all these changes we are of the view that it is better that the Act is replaced by a new Act. We recommend accordingly.

Other changes.

13. Parts I, II, IV, V and VI of the present Act may be converted into independent Chapters. Part III may be split up into three Chapters by incorporating certificate cases and liability provisions into separate Chapters. This is because certificate cases fall into a category of their own and the importance of the provisions relating to liability justifies their being dealt with in a separate Chapter. The rest of the provisions of Part III will form a separate Chapter.

Scheme of the proposed new Act.

¹See para. 9, *supra*.

PART II

PROPOSALS RELATING TO SECTIONS

Preamble and section 1. 14. The preamble should be omitted, as it merely repeats what is stated in the long title.

The title of the Act should be "Administrators-General Act". This will be in symmetry with the title of the Official Trustees Act, which is a sister Act.

Section 2. 15. The definitions of "exempted person" and "Indian Christian" may be omitted, as they are no longer necessary in view of our recommendations.¹ The definition of "Government" is unnecessary; the expression "State Government" should be employed in the substantive sections (unless the context requires otherwise)—the definition of "High Court" should be omitted, and the definition thereof in the General Clauses Act (highest Civil Court of appeal, etc.) should be applicable to this Act also.

Section 3. 16. The qualifications for the appointment of Administrator-General require to be changed. The mention of Barristers as a separate class has become out of date. Section 3(2) (a) may, therefore, be deleted.

Under section 3(2)(b), no qualification is imposed under the Act as to the standing of the Advocates, Attorneys, etc. This may have been due to the paucity, at the time of passing the Act, of persons of any standing willing to take up the post. Conditions have changed now. In keeping with the nature of the functions of the Administrator-General, we recommend that a minimum of seven years' standing should be prescribed. The reference to vakils may be deleted.

Section 3(2)(c) has become superfluous, as it refers only to persons holding the office of Deputy at the commencement of the Act. We are of the opinion that it is unfair to exclude altogether Deputies from the categories of persons eligible for appointment as Administrators-General. As the Deputy can and does sometimes perform the functions of the Administrator-General, we consider it reasonable to provide that a person who has worked for a specified period as a Deputy should be eligible for appointment as an Administrator-General. We need hardly add that in the case of persons appointed as Deputies in accordance with the qualifications recommended by us the case is much stronger. We recommend that sub-clause (c) of section 3(2) may be deleted and in its place a pro-

¹See para. 9, *supra*.

vision may be introduced to the effect that a person who has worked as a Deputy for a period of five years shall be eligible for appointment as an Administrator-General.¹

Under section 3(2) (d), a person already in the service of the Government may be appointed as Administrator-General in a State other than West Bengal, Madras or Bombay. This provision was made on the ground that it would be difficult to get persons with legal qualifications in those States. Whatever may have been the position in 1913, the reason cannot hold good now. We therefore recommend that the clause may be deleted.

A fruitful source of recruitment for filling up the post of Administrator-General is the State judiciary. We recommend that a person who has for at least ten years been a member of the judicial service of State may also be made eligible for appointment as an Administrator-General.²

17. No qualifications have been prescribed for appointment as Deputy. Since the Deputy may, under the Act, discharge any of the duties and exercise any of the powers of the Administrator-General, it is only proper that suitable qualifications should be prescribed. We recommend that no person shall be appointed as a Deputy unless he has for at least three years been an Advocate or an Attorney of a High Court or has for a like period been a member of the Judicial service of a State.³ Section 4.

18. No change in section 5. In section 6, it may be made clear that the concurrent jurisdiction of the district court is not affected. In section 7, the words "after the commencement of this Act" are unnecessary and may be omitted. In consequence, the words "which are" should also be omitted. Sections 5, 6, 7.

19. We are of the opinion that the Administrator-General should not have priority over a residuary legatee or his representative. A residuary legatee and his representative are treated as on the same footing as a universal legatee.⁴ If, as already provided in clause (b) of section 8, the Administrator-General is not entitled to priority over a universal legatee, it is logical that he should not be given priority over the residuary or his representative also. Clause (b) may be modified accordingly. Section 8.

¹This will apply to present incumbents also.

²We have made a similar recommendation regarding the office of Official Trustee in our Report on the Official Trustees Act—16th Report.

³In our Report on the Official Trustees Act we have made similar recommendations regarding the office of Deputy Official Trustee—See the 16th Report.

⁴Sections. 232 and 233 of the Indian Succession Act, 1925.

- Sections 9, 10, 11. 20. These may be altered in accordance with our recommendations above.¹
- Sections 12, 13. 21. The reference to section 10 will have to be omitted as a consequence of the changes recommended in sections 9, 10 and 11. Further, cases where a person has taken other proceedings for the protection of the estate² should be treated on the same footing as if probate, etc. had been taken. Lastly, the High Court should not grant letters of administration to the Administrator-General where it is satisfied that there is no danger of misappropriation, deterioration or waste and that such grant is not necessary for the protection of the estate.
- Section 14. 22. No change.
- Section 15. 23. The proper place for this section is after section 17. It may be so transposed. The reference to the Regimental Debts Act, 1893, may be removed as cases under that Act are not likely to arise now.³ Reference to the Navy Act, 1957, should be added. Both these changes should be carried out in sections 16 and 17 also.
- Section 16. 24. The Government of West Bengal has by an amending Act⁴ raised the limit to Rs. 2,000. We agree with the amendment and that may be embodied also in section 16, *i.e.* for Rs. 1,000 the figure Rs. 2,000 may be substituted.⁵
- Section 17. 25. No change, except as already⁶ discussed.
- Section 18. 26. The language of the section requires to be simplified, as the construction of the sentences is rather involved. We recommend that the section may be suitably recast for this purpose.
- Sections 19 to 23. 27. Where a will of the deceased is proved in the State, the grant made to the Administrator-General must be revoked. This may be made clear.
- Section 24. 28. Section 24 as it stands at present provides that probate or letters of administration granted by the High Court to the Administrator-General of any State shall have effect over the assets of the deceased throughout one or other States, if the High Court directs by its grant that such probate or letters should have such effect. A suggestion has been made that it will be more convenient to provide that a grant made by the High Courts to the Administrator-General of a State shall have effect over all the

¹See paragraphs 9 and 10, *supra*.

²*Cf.* para. 10(3), *supra*.

³The Fifth Report of the Law Commission (British Statutes applicable to India), page 57, item No. 150, has already recommended the repeal of this Act. and this has already been done by Act, 57 of 1960.

⁴The Administrator-General's (Bengal Amendment) Act, 1940,

s. 5.

⁵See also under s. 15 above.

⁶See under s. 15 above.

assets of the deceased throughout India, without a certificate being required (as at present) to specify the States wherein the grant will be effective. We think that the suggestion is worth accepting. We may, in this connection, draw attention to the first proviso to section 273 of the Indian Succession Act, 1925, under which probates or letters of administration granted by the High Court shall (unless otherwise directed by the grant) have effect throughout the other States. We recommend that section 24 may be amended on these lines.

29. A suggestion has been made by the Government of Jammu & Kashmir that grants of probate or letters of administration made by the High Court for that State to the Administrator-General should be effective in the other States in India also. Correspondingly, that Government propose to insert a provision in its own Bill on the subject to the effect that probate or letters of administration granted by the High Court of States other than by the High Court of Jammu and Kashmir shall have the same effect as it should have if the grant had been made by the High Court of Jammu & Kashmir. We agree with the suggestion. Where a person leaves properties both in Jammu & Kashmir and in the rest of India, it will be convenient if the entire estate is administered by the Administrator-General—either the Administrator-General of Jammu & Kashmir or the Administrator-General of any State in the rest of India. The matter would be dealt with on the basis of reciprocity, and therefore there can be no objection to the acceptance of the suggestion. It is, of course, not permissible to provide in our Act that a certificate granted by a High Court in India will have effect in the State of Jammu & Kashmir; the reason is, that the power of Parliament to legislate on the subject is derived from Art. 245 and 246(2) read with entry 11 in the concurrent list in the Seventh Schedule to the Constitution, and that entry is not applicable to Jammu & Kashmir. Therefore, the provisions for making effective the grants made by other High Courts will have to be made in the Jammu & Kashmir Bill. But the provision, making a grant made by the High Court for Jammu & Kashmir effective in other parts of India, can be made by Parliament. We may, in this connection, invite attention to the provisions of section 382 of the Indian Succession Act, 1925 (as amended by Act 34 of 1957) read with section 380 under which, where a certificate in the prescribed form has been granted to a resident within the State of Jammu & Kashmir by the District Judge of that State, etc., the certificate shall have the same effect in India as a certificate granted under Part X of the Succession Act. We recommend that the provisions on the lines desired by the Government of Jammu & Kashmir may be incorporated.

Insertion,
new section
for Jammu
and Kash-
mir.

- Section 25. 30. No change.
- Section 26. 31. There does not seem to be any justification for restricting the application of the rule as to computing the period of limitation embodied in clause (5) to claims of creditors. We recommend that it should be made applicable to claims by others as well.
- Sections 27, and 28. 32. No change, except that for brevity. Section 28 may be compressed.
- Section 29. 33. The sub-sections of this section are independent of each other, and should for that reason be made into independent sections.
- Further, in section 29(2), the reference to Deputy is unnecessary and should be omitted.¹
- Section 30. 34. We recommend that the Administrator-General should have the same plenary powers regarding witnesses, etc. as an auditor under section 46.
- Section 31. 35. All the State Governments, excepting that of former Saurashtra, agreed that the limit of rupees two thousand should be raised and the suggestion is that it may be raised to rupees four or five thousand. It will be more expeditious to get certificates from the Administrator-General. We recommend that the limit may be raised to five thousand rupees. We also recommend some verbal changes so that the time-limit of one month may appear in a negative form.
- Section 32. 36. Consequent on our recommendations under sections 9—11 above,² the words commencing with "and such deceased was not an exempted person" and ending with "Official Gazette" will have to be omitted.
- Sections 33 to 36. 37. In section 33, the words "either by the oath", etc. should be replaced by a provision for such inquiry as the Administrator-General thinks fit, so as to leave him some discretion. No change in section 34. In section 35, the certificate-holder should have an opportunity of showing cause before revocation. No change in section 36.

38. The Government of West Bengal has, by an Amending Act,³ introduced a section immediately after section 36, indemnifying payments made to the holder of a certificate before such certificate has been revoked. The provision is a useful one and may be adopted.⁴

¹See existing section 4 ; *cf* s. 13(2) of the Official Trustees Act as proposed to be amended in our Report thereon.

²See paragraphs 9 and 10, *supra*.

³The Administrator-General's (Bengal Amendment) Act, 1940 S. 8.

⁴See Appendix I, clause 35.

39. In keeping with our recommendation under Section 37, section 31, the amount may be increased from two thousand rupees to five thousand rupees.

40. A question has been raised whether, consequential on the new section which we proposed to insert¹ relating to a grant made by the High Court for Jammu and Kashmir, it is necessary to amend section 38. We have carefully considered the matter and are of the opinion that no such amendment is necessary. Section 38 (in so far as it is relevant for Jammu and Kashmir) provides for the transfer of surplus assets of a deceased to the executor or administrator in the State of Jammu and Kashmir for distribution amongst heirs of the deceased in that State. The section is not concerned with relations between the Administrator-General of one State and the Administrator-General of another State only. It contemplates the delivery of assets by the Administrator-General or by a certificate-holder. Further, the delivery is to be made to the executor or the administrator in the country of domicile (and not necessarily to the Administrator-General of the foreign country). Therefore it is unnecessary to amend section 38. Section 38.

41. Sub-section (2) may be omitted, as it is no longer necessary. The words "revenues of" may be omitted in view of the constitutional provisions regarding Consolidated Fund. Section 39.

42. In sub-section (2) of section 40, the Government of West Bengal has added the words "of the amount decreed or ordered by the Court to be paid" after the words "payment".² We accept the amendment and recommend that it may be introduced. Section 40.

43. No change. Section 41.

44. In sub-section (1), the first proviso may be omitted as it is no longer necessary. The second proviso is also obsolete and should be omitted. In sub-section (2), the words "revenues of" should be omitted in view of the provisions of the Constitution relating to Consolidated Fund. Section 42.

45. No change in substance. Sections 43 and 44.

46. The Government of West Bengal has added³ a further clause, namely "whether the accounts have been audited in the prescribed manner" before clause (a) and also introduced the words "so far as can be Section 45.

¹See para. 29, *supra*.

²The Administrator General's (Bengal Amendment) Act, 1940, s. 8.

³The Administrator-General's (Bengal Amendment) Act, 1940, s. 9.

ascertained by such audit of the accounts" in place of the word "they" in existing clause (a). By way of abundant caution we recommend that these changes may be adopted.

- Sections 46. 47. No changes in substance. Sub-section (1) may be drafted on the lines of similar provisions in recent statutes.
- Sections 47 to 49. 48. No change.
- Section 50. 49. This section deals with the rule-making power. It should therefore be put in the last Chapter.
- Sections 51 to 53. 50. No change in sections 51 and 52. In section 53, the words "so much thereof as appears" are vague; reference to the decision of the prescribed authority should be added.
- Sections 54. 51. Section 54 of the Act provides for action by the District Judge in respect of non-exempted persons. Under sub-section (1), the District Judge has to report the death of any such person without delay to the Administrator-General, stating certain specified particulars. Sub-section (2) provides that until the Administrator-General obtains letters of administration or until some other person obtains probate or such letters or certificate, etc., the District Judge shall retain the assets under his charge or appoint an officer under section 239 of the Succession Act, 1865 (now section 269 of the Indian Succession Act, 1925). Under sub-section (3), the District Judge has also power to pay out of the assets or proceeds sums necessary for funeral expenses, wages for services rendered within three months before the death, expenses for meeting immediate necessities of the family and other acts necessary for the proper care and management of the assets. Now, sections 192 and 269 of the Succession Act also provide that the District Judge can take action for the preservation and protection of the estate of the deceased. We think that section 54 is out of place in the Administrator-General's Act and that if it is to be retained, its proper place would be in the Succession Act. We, therefore, recommend that the section may be omitted from the Administrator General's Act. As and when the Indian Succession Act is taken up for revision, the question of incorporating a suitable provision may be considered.
- Section 55. 52. Each of the sub-clauses of this section may be made separate sections. The limit of Rs. 200 may be increased to Rs. 400 in view of section 85 of the Bombay Police Act, 1951.
- Section 56. 53. No change.
- Section 57. 54. No change in substance. Separate provision may be made in respect of the power of Central Government to make rules.

55. No change.

Section 59.*

56. These may be omitted. The operation of section 59A and 59B may, however, be preserved as a saving, since it may be necessary for the Central Government to have recourse to this section for some time more for passing orders regarding property vested in one Administrator-General.

57. Provision may be made, by way of abundant Repeal. caution, that the repeal of the 1913 Act shall not affect the incorporation of any person holding the office of Administrator-General at the commencement of the proposed Act.

58. With a view to presenting a clear picture of the Appendix I. proposals made by us in this Report, we have shown our proposals in the form of draft sections in Appendix I.

59. In Appendix II we have given a table showing Appendix II the provision in the existing Act and the corresponding provision, if any, in Appendix I.

60. Appendix III contains our suggestions in respect Appendix III. of other Acts.

1. T. L. VENKATARAMA AIYAR—*Chairman.*

2. P. SATYANARAYANA RAO

3. L. S. MISRA

4. G. R. RAJAGOPAL

5. S. CHAUDHURI

6. N. A. PALKHIVALA

} *Members.*

D. BASU,

Joint Secretary.

NEW DELHI ;

The 5th May, 1961.

*Section 58 has been repealed by the A.O. 1937.

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APPENDIX I

Proposals as shown in the form of a draft Bill.

[This is a tentative draft only]

[Corresponding sections of the existing Act are noted in the margin.]

THE ADMINISTRATORS-GENERAL BILL, 1961

A

BILL

to consolidate and amend the law relating to the office and duties of Administrator-General.

BE it enacted by Parliament in the Twelfth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title,
extent and
commence-
ment.
[s. 1.]

1. (1) This Act may be called the Administrators-General Act, 19.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

[s 2 (1).]

(a) “assets” means all the property, movable and immovable, of a deceased person, which is chargeable with and applicable to the payment of his debts and legacies, or available for distribution among his heirs and next-of-kin;

[s. 2(5).]

(b) “letters of administration” includes any letters of administration whether general or with a copy of the will annexed or limited in time or otherwise;

[s. 2(6).]

(c) “next-of-kin” includes a widower or widow of a deceased person, or any other person who by law would be entitled to letters of administration in preference to a creditor or legatee of the deceased; and

[s. 2(8).]

(d) “prescribed” means prescribed by rules under this Act.

CHAPTER II

THE OFFICE OF THE ADMINISTRATOR-GENERAL

3. (1) The State Government shall appoint an Administrator-General for the State: Appointment of Administrator-General. [s. 3.]

Provided that nothing herein contained shall be deemed to bar the appointment of the same person as Administrator-General for two or more States.

(2) No person shall be appointed to the office of Administrator-General unless he—

(a) has for at least seven years been an advocate; or

(b) has for at least seven years been an attorney of a High Court; or

(c) has for at least ten years been a member of the judicial service of a State; or

(d) has for at least five years held the office of Deputy Administrator-General.

4. (1) The State Government may appoint a Deputy or Deputies to assist the Administrator-General; and any Deputy so appointed shall, subject to the control of the Government and the general or special orders of the Administrator-General, be competent to discharge any of the duties and to exercise any of the powers of the Administrator-General, and when discharging such duties or exercising such powers shall have the same privileges and be subject to the same liabilities as the Administrator-General. Appointment and powers of Deputy Administrator-General. [s. 4.]

(2) No person shall be appointed as a Deputy under this section unless he—

(a) has for at least three years been an advocate; or

(b) has for at least three years been an attorney of a High Court; or

(c) has for at least three years been a member of the judicial service of a State.

5. The Administrator-General shall be a corporation sole by the name of the Administrator-General of the State for which he is appointed, and, as such Administrator-General, shall have perpetual succession and an official seal, and may sue and be sued in his corporate name. Incorporation. s. 5.]

CHAPTER III

RIGHTS, POWERS AND DUTIES OF THE ADMINISTRATOR-GENERAL

(a) *Grant of letters of administration and probate*

Jurisdiction of High Court for the whole State.
[s. 6.]

6. So far as regards the Administrator-General of any State, the High Court shall be deemed to be a court of competent jurisdiction for the purpose of granting probate or letters of administration under any law for the time being in force; wheresoever within the State the estate to be administered is situate:

Provided that nothing in this section shall be construed as affecting the jurisdiction of any district court.

Administrator-General entitled to letters of administration, unless granted to next-of-kin.
[s. 7.]

7. Any letters of administration, granted by the High Court, shall be granted to the Administrator-General of the State unless they are granted to the next-of-kin of the deceased.

Administrator-General entitled to letters of administration in preference to creditors, certain legatees or friends.
[s. 8.]

8. The Administrator-General of the State shall be deemed by all the courts in the State to have a right to letters of administration other than letters *pendente lite* in preference to that of—

(a) a creditor; or

(b) a legatee, other than a universal legatee or a residuary legatee or the representative of a residuary legatee; or

(c) a friend of the deceased.

Right of Administrator-General to apply for administration of estates.
[s. 9.]

9. (1) If—

(a) any person has died leaving within any State assets exceeding rupees five thousand in value, and

(b) (whether the obtaining of probate of his will or letters of administration to his estate is or is not obligatory), no person to whom any court would have jurisdiction to commit administration of such assets has, within one month after his death, applied in such State for such probate, or letters of administration, and

(c) (in cases where the obtaining of such probate or letters of administration is not obligatory under the provisions of the Indian Succession Act, 1925), no person has taken other proceedings for the protection of the estate,

the Administrator-General of the State in which such assets are, may, subject to any rules made by the State Government, within a reasonable time after he has had notice of the death of such person, and of his having left such assets, take such proceedings as may be necessary to obtain

from the High Court letters of administration of the estate of such person.

(2) The Administrator-General shall not take proceedings under this section unless he is satisfied, that there is apprehension of misappropriation, deterioration or waste of such assets if such proceedings are not taken by him or that such proceedings are otherwise necessary for the protection of the assets.

10. (1) Whenever any person has died leaving assets within any State exceeding rupees five thousand in value, and the High Court for that State is satisfied that there is imminent danger of misappropriation, deterioration or waste of such assets, requiring immediate action, the High Court may, upon the application of the Administrator-General or of any person interested in such assets or in the due administration thereof, forthwith direct the Administrator-General—

Power of Administrator-General to collect and hold assets where immediate action is required.

[s. 11.]

(a) to collect and take possession of such assets, and

(b) to hold, deposit, realise, sell or invest the same according to the directions of the High Court, and, in default of any such directions, according to the provisions of this Act so far as the same are applicable to such assets.

(2) Any order of the High Court under sub-section (1) shall entitle the Administrator-General—

(a) to maintain any suit or proceeding for the recovery of such assets;

(b) if he thinks fit, to apply for letters of administration of the estate of such deceased person;

(c) to retain out of the assets of the estate any fees chargeable under rules made under this Act; and

(d) to reimburse himself for all payments made by him in respect of such assets which a private administrator might lawfully have made.

11. If, in the course of proceedings to obtain letters of administration under the provisions of section 9 or section 10,—

Grant of probate or letters of administration to person appearing in the course of proceedings taken by Administrator-General.

(a) any person appears and establishes his claim—

(i) to probate of the will of the deceased; or

(ii) to letters of administration as next-of-kin of the deceased, and gives such security as may be required of him by law; or

(b) any person satisfies the Court that he has taken and is prosecuting with due diligence other proceedings for the protection of the estate, the case being one in which the obtaining of such

[s. 12.]

probate or letters of administration is not obligatory under the provisions of the Indian Succession Act, 1925; or

39 of 1925.

(c) the court is satisfied that there is no apprehension of misappropriation, deterioration, or waste of the assets and that the grant of letters of administration in such proceedings is not otherwise necessary for the protection of the assets;

the Court shall—

(1) in the case mentioned in clause (a), grant probate of the will or letters of administration accordingly,

(2) in the case mentioned in clause (b) or (c), drop the proceedings, and

(3) in all the cases award to the Administrator-General the costs of any proceedings taken by him under those sections, to be paid out of the estate as part of the testamentary or intestate expenses thereof.

Grant of administration to Administrator-General in certain cases.

[s. 13.]

12. If, in the course of proceedings to obtain letters of administration under the provisions of section 9 or section 10, and within such period as to the Court seems reasonable, no person appears and establishes his claim to probate of a will, or to a grant of letters of administration as next-of-kin of the deceased, or satisfies the Court that he has taken and is prosecuting with due diligence other proceedings for the protection of the estate, the case being one in which the obtaining of such probate or letters of administration is not obligatory under the provisions of the Indian Succession Act, 1925, and the Court is satisfied that there is no apprehension of misappropriation, deterioration, or waste of the assets and that the grant of letters of administration in such proceedings is not otherwise necessary for the protection of the assets;

39 of 1925.

or if a person who has established his claim to a grant of letters of administration as next-of-kin of the deceased fails to give such security as may be required of him by law,

the Court may grant letters of administration to the Administrator-General.

Administrator-General not precluded from applying for letters within one month after death.

[s. 14.]

13. Nothing in this Act shall be deemed to preclude the Administrator-General from applying to the Court for letters of administration in any case within the period of one month from the death of the deceased.

(b) *Revocation of grants*

14. If an executor or next-of-kin of the deceased, who has not been personally served with a citation or who has not had notice thereof in time to appear pursuant thereto, establishes to the satisfaction of the Court a claim to probate of will or to letters of administration in preference to the Administrator-General, any letters of Administration granted in accordance with the provisions of this Act to the Administrator-General—

Recall of Administrator-General's administration and grant of probate, etc., to executor or next-of-kin.

[s. 18, main para.]

(a) shall be revoked, if a will of the deceased is proved in the State;

[s. 18, proviso, part]

(b) may be revoked, in other cases, if an application for that purpose is made within six months after the grant to the Administrator-General and the Court is satisfied that there has been no unreasonable delay in making the application, or in transmitting the authority under which the application is made;

[s. 18, proviso, part.]

and probate or letters of administration may be granted to such executor or next-of-kin as the case may be.

15. If any letters of administration granted to the Administrator-General in accordance with the provisions of this Act are revoked, the Court may order the costs of obtaining such letters of administration, and the whole or any part of any fees which would otherwise have been payable under this Act, together with the costs of the Administrator-General in any proceedings taken to obtain such revocation, to be paid to or retained by the Administrator-General out of the estate:

Cost of obtaining administration, etc., may, on revocation, be ordered to be paid to Administrator-General out of estate.

Provided that nothing in this section shall affect provisions of clauses (c) and (d) of sub-section (2) of section 10.

[s. 19.]

16. If any letters of administration granted to the Administrator-General in accordance with the provisions of this Act are revoked, the same shall, so far as regards the Administrator-General and all persons acting under his authority in pursuance thereof, be deemed to have been only voidable, except as to any act done by any such Administrator-General or other person as aforesaid, after notice of a will or of any other fact which would render such letters void:

After revocation, letters granted to Administrator-General to be deemed, as to him, to have been voidable only.

Provided that no notice of a will or of any other fact which would render any such letters void shall affect the Administrator-General or any person acting under his authority in pursuance of such letters unless, within the period of one month from the time of giving such notice, proceedings are commenced to prove the will, or to cause the letters to be revoked, and such

[s. 20.]

proceedings are prosecuted without unreasonable delay.

Payments made by Administrator-General prior to revocation.
[s. 21]

17. If any letters of administration granted to the Administrator-General in accordance with the provisions of this Act are revoked, upon the grant of probate of a will, or upon the grant of letters of administration with a copy of the will annexed, all payments made or acts done by or under the authority of the Administrator-General in pursuance of such letters of administration, prior to the revocation, which would have been valid under any letters of administration lawfully granted to him with a copy of such will annexed, shall be deemed valid notwithstanding such revocation.

(c) *General*

Administrator-General's petition for grant of letters of administration.
[s. 22.]

18. Whenever any Administrator-General applies for letters of administration in accordance with the provisions of this Act, it shall be sufficient if the petition required to be presented for the grant of such letters states,—

(i) the time and place of the death of the deceased to the best of the knowledge and belief of the petitioner;

(ii) the names and addresses of the surviving next-of-kin of the deceased, if known;

(iii) the particulars and value of the assets likely to come into the hands of the petitioner;

(iv) particulars of the liabilities of the estate, if known.

Name in which probate or letters to be granted.
[s.23.]

19. All probates or letters of administration granted to any Administrator-General shall be granted to him by that name.

Effect of probate or letters granted to Administrator-General
s. 23.]

20. (1) Probate or letters of administration granted by the High Court to the Administrator-General of any State shall have effect over all the assets of the deceased throughout the territories to which this Act extends and shall be conclusive as to the representative title against all debtors of the deceased and all persons holding such assets, and shall afford full indemnity to all debtors paying their debts and all persons delivering up such assets to such Administrator-General.

(2) Whenever a grant of probate or letters of administration is made by a High Court to the Administrator-General, the High Court shall send to the High Courts for the other States a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same.¹

¹The provision regarding Rangoon High Court has been omitted, as obsolete.

21. Probate or letters of administration granted by the High Court for the State of Jammu and Kashmir to the Administrator-General of that State shall have effect over all the assets of the deceased throughout all the States to the High Courts of which a certificate is sent by the High Court for the State of Jammu and Kashmir that such grant has been made, and shall be conclusive as to the representative title against all debtors of the deceased and all persons holding such assets, and shall afford full indemnity to all debtors paying their debts and all persons delivering up such assets to such Administrator-General.

Effect of grant by the High Court of Jammu and Kashmir. [New]

22. (1) Any private executor or administrator may, with the previous consent of the Administrator-General of the State in which any of the assets of the estate, in respect of which such executor or administrator has obtained probate or letters of administration, are situate, by an instrument in writing under his hand notified in the Official Gazette, transfer the assets of the estate, vested in him by virtue of such probate or letters to the Administrator-General by that name or any other sufficient description.

Transfer by private executor or administrator of interest under probate or letters. [s. 25.]

(2) As from the date of such transfer the transferor shall be exempt from all liability as such executor or administrator, as the case may be, except in respect of acts done before the date of such transfer, and the Administrator-General shall have the rights which he would have had, and be subject to the liabilities to which he would have been subject, if the probate or letters of administration, as the case may be, had been granted to him by that name at the date of such transfer.

23. (1) When the Administrator-General has given the prescribed notice to creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he has notice of.

Distribution of assets. [s. 26.]

(2) The Administrator-General shall not be liable for the assets so distributed to any person of whose claims he had not notice at the time of such distribution.

(3) No notice of any claim which has been sent in and has been rejected or disallowed in part by the Administrator-General shall affect him, unless proceedings to enforce such claim are commenced within one month after notice of the rejection or disallowance of such claim has been given in the prescribed manner and unless such proceedings are prosecuted without unreasonable delay.

(4) Nothing in this section shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively.

(5) In computing the period of limitation for any suit, appeal or application under the provisions of any law for the time being in force, the period between the date of submission of the claim of a creditor or other claimant to the Administrator-General and the date of the final decision of the Administrator-General on such claim shall be excluded.

Appointment of Official Trustee as trustee of assets after completion of administration.
[s. 27.]

24. (1) When the Administrator-General has, so far as may be, discharged all the liabilities of an estate administered by him, he shall notify the fact in the Official Gazette, and he may, by an instrument in writing, with the consent of the Official Trustee and subject to any rules made by the State Government, appoint the Official Trustee to be the trustee of any assets then remaining in his hands.

(2) Upon such appointment such assets shall vest in the Official Trustee as if he had been appointed trustee in accordance with the provisions of the Official Trustees Act, 1913, and shall be held by him upon the same trusts as the same were held immediately before such appointment. ^{2 of 1913.}

Power of High Court to give directions regarding administration of estate.
[s. 28.]

25. The High Court may, on application made to it by the Administrator-General or any person interested in the assets or in the due administration thereof, give to the Administrator-General of the State any general or special directions as to any estate in his charge or in regard to the administration of any such estate.

No security to be required from Administrator-General.
[s. 29(1).]

26. No Administrator-General shall be required by any Court to enter into any administration bond, or to give other security to the Court, on the grant of any letters of administration to him by that name.

Manner in which petition to be verified by Administrator-General.
[s. 29(2).]

27. No Administrator-General shall be required to verify, otherwise than by his signature, any petition presented by him under the provisions of this Act, and, if the facts stated in any such petition are not within his own personal knowledge, the petition may be subscribed and verified by any person competent to make verification.

Entry of Administrator-General not to constitute notice of a trust.
[s. 29(3).]

28. The entry of the Administrator-General by that name in the books of a company shall not constitute notice of a trust, and a company shall not be entitled to object to entering the name of the Administrator-General on its register by reason only that the Administrator-General is a corporation, and in dealing with assets the fact that the person dealt with is the Administrator-General shall not of itself constitute notice of a trust.

CHAPTER IV

GRANT OF CERTIFICATE

19 of 1925. 29. (1) Whenever any person had died leaving assets within any State and the Administrator-General of such State is satisfied that such assets, excluding any sum of money deposited in a Government Savings Bank or in any provident fund to which the provisions of the Provident Funds Act, 1925, apply, did not at the date of death exceed in the whole five thousand rupees in value, he may grant to any person, claiming otherwise than as a creditor to be interested in such assets or in the due administration thereof, a certificate under his hand entitling the claimant to receive the assets therein mentioned left by the deceased within the State, to a value not exceeding in the whole five thousand rupees.

In what cases Administrator-General may grant certificate. [s. 31, main para, part.]

(2) No certificate under this section shall be granted before the lapse of one month from the death unless before the lapse of the said one month the Administrator-General is requested so to do by writing under the hand of the executor or the widow or other person entitled to administer the estate of the deceased and he thinks fit to grant it.

[s. 31, main para, part.]

(3) No certificate shall be granted under this section,—

[s. 31, proviso.]

(i) where probate of the deceased's will or letters of administration of his estate has or have been granted; or

(ii) in respect of any sum of money deposited in a Government Savings Bank or in any provident fund to which the provisions of the Provident Funds Act, 1925, apply.

19 of 1925

30. (1) If, in cases falling within section 29, no person claiming to be interested otherwise than as a creditor in such assets or in the due administration thereof obtains, within three months of the death of the deceased, a certificate from the Administrator-General under that section, or probate of a will or letters of administration of the estate of the deceased, the Administrator-General may administer the estate without letters of administration, in the same manner as if such letters had been granted to him.

Grant of certificate to creditors and power to take charge of certain estates.

[s. 32.]

(2) If the Administrator-General neglects or refuses to administer such estate, he shall, upon the application of a creditor, grant a certificate to him in the same manner as if he were interested in such assets otherwise than as a creditor; and such certificate shall have the same effect as a certificate granted under the provisions of section 29, and shall be subject to all provisions of this Act which are applicable to such certificate.

(3) The Administrator-General may, if he thinks fit, before granting a certificate under sub-section (2), require the creditor to give reasonable security for the due administration of the estate of the deceased.

Administrator-General not bound to grant certificate unless satisfied of claimant's title, etc.
[s. 33.]

31. The Administrator-General shall not be bound to grant any certificate under section 29 or section 30 unless he is satisfied after making such inquiry as he thinks fit of the title of the claimant and of the value of the assets left by the deceased within the State.

Effect of certificate.
[s. 34.]

32. The holder of a certificate granted in accordance with the provisions of section 29 or section 30 shall have in respect of the assets specified in such certificate the same powers and duties, and be subject to the same liabilities as he would have had or been subject to if letters of administration had been granted to him:

Provided that nothing in this section shall be deemed to require any person holding such certificate,—

(a) to file accounts or inventories of the assets of the deceased before any court or other authority; or

(b) save as provided in section 30, to give any bond for the due administration of the estate.

Revocation of certificate.
[s. 35.]

33. (1) The administrator-General may revoke a certificate granted under the provisions of section 29 or section 30 on any of the following grounds, namely:—

(i) that the certificate was obtained by fraud or misrepresentation made to him;

(ii) that the certificate was obtained by means of an untrue allegation of a fact essential in law to justify the grant though such allegation was made in ignorance or inadvertently.

(2) No certificate shall be revoked under this section unless the holder of the certificate has been given a reasonable opportunity of showing cause why the certificate should not be so revoked.

Surrender of revoked certificate.
[s. 36.]

34. (1) When a certificate is revoked in accordance with the provisions of section 33, the holder thereof shall, on the requisition of the Administrator-General, deliver it up to such Administrator-General, but shall not be entitled to the refund of any fee paid thereon.

(2) If such person wilfully and without reasonable cause omits to deliver up the certificate, he shall be punishable with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

35. When a certificate is revoked in accordance with the provisions of section 33, all payments made in good faith under such certificate to the holder thereof before such revocation, shall, notwithstanding such revocation, be a legal discharge to the person making the payment and the holder of such certificate may retain, and reimburse himself in respect of, any payments made by him which the person to whom a certificate or probate or letters of administration may afterwards be granted might lawfully have made.¹

Payment to holder of certificate before it is revoked.

[New]

36. The Administrator-General shall not be bound to take out letters of administration of the estate of any deceased person on account of the assets in respect of which he grants any certificate under section 29 or section 30, but he may do so if he revokes such certificate under section 33, or ascertains that the value of the estate exceeded five thousand rupees.

Administrator-General not bound to take out administration on account of assets for which he has granted certificate.

[s. 37.]

37. Where—

(a) a person not having his domicile in any State to which this Act extends has died leaving assets in any State and in the country in which he had his domicile at the time of his death, and

Transfer of certain assets from any State to which this Act extends to executor or administrator in country of domicile for distribution.

(b) proceedings for the administration of his estate with respect to assets in any such State have been taken under section 29 or section 30, and

[s. 38.]

(c) there has been a grant of administration in the country of domicile with respect to the assets in that country,

the holder of the certificate granted under section 29 or section 30, or the Administrator-General, as the case may be, after having given the prescribed notice for creditors and others to send in to him their claims against the estate of the deceased, and after having discharged, at the expiration of the time therein named, such lawful claims as he has notice of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of India or in the State of Jammu and Kashmir who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

¹*Cf.* section 36A as inserted in the existing Act by section 7 of the Administrator-General's (Bengal Amendment) Act, 1940 (Bengal Act II of 1940).

CHAPTER V

LIABILITY

Liability of Government. [s. 39.] 38. The Government shall be liable to make good all sums required to discharge any liability which the Administrator-General, if he were a private administrator, would be personally liable to discharge, except when the liability is one to which neither the Administrator-General nor any of his officers has in any way contributed, or which neither he nor any of his officers could, by the exercise of reasonable diligence, have averted, and in either of those cases the Administrator-General shall not, nor shall the Government, be subject to any liability.

Creditors' suit against Administrator-General. [s. 40.] 39. (1) If any suit be brought by a creditor against any Administrator-General, such creditor shall be liable to pay the costs of the suit unless he proves that not less than one month previous to the institution of the suit he had applied in writing to the Administrator-General, stating the amount and other particulars of his claim, and had given such evidence in support thereof as, in the circumstances of the case, the Administrator-General was reasonably entitled to require.

(2) If any such suit is decreed in favour of the creditor, he shall, nevertheless, unless he is a secured creditor, be only entitled to payment of the amount decreed or ordered by the court to be paid¹ out of the assets of the deceased equally and rateably with the other creditors.

Notice of suit not required in certain cases. [s. 41.] 40. Nothing in section 80 of the Code of Civil Procedure, 1908, shall apply to any suit against the Administrator-General in which no relief is claimed against him personally. ^{5 of 1908.}

CHAPTER VI

FEES

Fees. [s. 42.] 41. (1) There shall be charged in respect of the duties of the Administrator-General such fees, whether by way of percentage or otherwise, as may be prescribed by the State Government.

(2) The fees under this section may be at different rates for different estates or classes of estates or for different duties, and shall, so far as may be, be arranged so as to produce an amount sufficient to discharge the salaries and all other expenses incidental to the working of this Act, (including such sum as the State Government may determine to be required to insure the Government against loss under this Act).

¹*Cf.* the amendment made by section 8 of the Administrator-General's Bengal Amendment Act, 1940, (Bengal Act 11 of 1940).

CHAPTER VII

AUDIT OF THE ADMINISTRATOR-GENERAL'S ACCOUNTS

43. The accounts of every Administrator-General shall be audited at least once annually and at any other time if the State Government so directs, by the prescribed person and in the prescribed manner. [s. 44.]

44. The auditors shall examine the accounts and forward to the State Government a Statement thereon and a certificate signed by them showing—
 (a) whether the accounts have been audited in the prescribed manner;¹
 (b) whether, so far as can be ascertained by such audit, the accounts contain a full and true account of everything which ought to be inserted therein;¹
 (c) whether the books which by any rules made under this Act are directed to be kept by the Administrator-General, have been duly and regularly kept; and
 (d) whether the assets and securities have been duly kept and invested and deposited in the manner prescribed by this Act, or by any rules made thereunder; [s. 45.]

or (as the case may be) that such accounts are deficient, or that the Administrator-General has failed to comply with this Act or the rules made thereunder, in such respect as may be specified in such certificate.

5 of 1908. 45. (1) Every auditor shall have all the powers vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely:—
 (a) summoning and enforcing the attendance of witnesses and examining them on oath;
 (b) discovery and inspection;
 (c) compelling the production of documents; and
 (d) issuing commissions for the examination of witnesses. Power of auditors to summon and examine witnesses, and to call for documents. [s. 46.]

45 of 1860. (2) Any person who when summoned refuses, or without reasonable cause, neglects to attend or to produce any document or thing or attends and refuses to be sworn, or to be examined, shall be deemed to have committed an offence within the meaning of, and punishable under, section 188 of the Indian Penal Code, and the auditor shall report every case of such refusal or neglect to the State Government.

¹Cf. the amendment made by section 9 of the Administrator-General's (Bengal Amendment) Act, 1940 (Bengal Act, 11 of 1940).

Costs of
audit, etc.
[s. 47.]

46. The costs of and incidental to such audit and examination shall be determined in accordance with rules made by the State Government, and shall be defrayed in the prescribed manner.

CHAPTER VIII

MISCELLANEOUS

General
powers of
administra-
tion.
[s. 48.]

47. The Administrator-General may, in addition to, and not in derogation of, any other powers of expenditure lawfully exercisable by him, incur expenditure—

(a) on such acts as may be necessary for the proper care and management of any property belonging to any estate in his charge; and

(b) with the sanction of the High Court, on such religious, charitable and other objects, and on such improvements, as may be reasonable and proper in the case of such property.

Power to
summon
and examine
witnesses.
[s. 30.]

48. (1) The Administrator-General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, exercise all the powers vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of witnesses and examining them on oath;

(b) discovery and inspection;

(c) compelling the production of documents;
and

(d) issuing commissions for the examination of witnesses.

(2) The provisions of sub-section (2) of section 45 shall apply in relation to a person summoned by the Administrator-General under this section as they apply in relation to a person summoned under that section.

Power of
person bene-
ficially in-
terested to
inspect
Administra-
tor-General's
account, etc.,
and take
copies.
[s. 49.]

49. Any person interested in the administration of any estate which is in the charge of the Administrator-General shall, subject to such conditions and restrictions as may be prescribed, be entitled at all reasonable times to inspect the accounts relating to such estate and the reports and certificates of the auditor, and on payment of the prescribed fee, to copies thereof and extracts therefrom.

False
evidence.
[s. 51.]

50. Whoever, during any examination authorised by this Act, makes upon oath a statement which is false and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

51. All assets in the charge of the Administrator-General which have been in his custody for a period of twelve years or upwards, whether before or after the commencement of this Act, without any application for payment thereof having been made and granted by him shall be transferred, in the prescribed manner, to the account and credit of the Government: Assets unclaimed for twelve years to be transferred to Government. [s. 52.]

Provided that this section shall not authorise the transfer of any such assets as aforesaid, if any suit or proceeding is pending in respect thereof in any court.

52. (1) If any claim is hereafter made to any part of the assets transferred to the account and credit of the Government under the provisions of this Act, or any Act hereby repealed, and if such claim is established to the satisfaction of the prescribed authority, the State Government shall pay to the claimant the amount of the principal so transferred to its account and credit or so much thereof as has been found by the said authority to be due to the claimant. Mode of proceeding by claimant to recover principal money so transferred. [s. 53.]

(2) If the claim is not established to the satisfaction of the prescribed authority, the claimant may, without prejudice to his right to take any other proceedings for the recovery of such assets, apply by petition to the High Court against the State Government and such Court, after taking such evidence as it thinks fit, shall make such order in regard to the payment of the whole or any part of the said principal sum as it thinks fit, and such order shall be binding on all parties to the proceedings.

(3) The Court may further direct by whom the whole or any part of the costs of each party shall be paid.

39 of 1925.
of 1956. 53. Nothing contained in the Indian Succession Act, 1925, or the Companies Act, 1956, shall be taken to supersede or affect the rights, duties and privileges of any Administrator-General. Succession Act or Companies Act not to affect Administrator-General. [s. 55(1).]

39 of 1925. 54. Nothing contained in the Indian Succession Act, 1925, or in this Act, shall be deemed to affect, or to have affected, any law for the time being in force relating to the movable property under four hundred rupees in value¹ of persons dying intestate within any of the Presidency-towns which shall be or has been taken charge of by the police for the purpose of safe custody. Savings of provisions of Police Acts for presidency-towns. [s. 55(2).]

¹Compare, for example,—

(i) Section 101(2) read with section 101(1), Calcutta Police Act, 1866, (Bengal Act 4 of 1866) Bengal Code, Vol. II, p. 107. (It mentions two hundred rupees).

(ii) Section 85 (1) (read with sections 83 and 84) of the Bombay Police Act, 1951, (Bombay Act 22 of 1951) Bombay Code, Vol. III, p. 3686. (It mentions four hundred rupees).

Order of court to be equivalent to decree. [s. 56.]

55. Any order made under this Act by any court shall have the same effect as a decree.

Provision for administration by Consular Officer in case of death in certain circumstances of foreign subject. [s. 57, part.]

56. Notwithstanding anything in this Act, or in any other law for the time being in force, the Central Government may, by general or special order, direct that, where a subject of a foreign State dies in the territories to which this Act extends, and it appears that there is no one in the said territories, other than the Administrator-General, entitled to apply to a court of competent jurisdiction for letters of administration of the estate of the deceased, letters of administration shall, on the application to such court by any Consular Officer of such foreign State, be granted to such Consular Officer on such terms and conditions as the Court may, subject to any rules made in this behalf by the Central Government, think fit to impose.

Letters of administration not necessary in respect of small estates administered by Administrator-General in accordance with certain Acts. [s. 16.]

57. It shall not be necessary for the Administrator-General to take out letters of administration of the estate of any deceased person which is being administered by him in accordance with the provisions of the Army and Air Force (Disposal of Private Property) Act, 1950, or the Navy Act, 1957, if the value of such estate does not, on the date when such administration is committed to him, exceed rupees two thousand, but he shall have the same power in regard to such estate as he would have had if letters of administration had been granted to him. 40 of 1950.
62 of 1957.

Powers to grant Administrator-General letters limited for purpose of dealing with assets in accordance with the Army and Air Force (Disposal of Private Property) Act, 1950, or the Navy Act, 1957. [s. 17.]

58. If the Administrator-General applies in accordance with the provisions of the Army and Air Force (Disposal of Private Property) Act, 1950, or the Navy Act, 1957, for letters of administration of the estate of any person subject to the Army Act, 1950, or the Air Force Act, 1950, or the Navy Act, 1957, the Court may grant to him letters of administration limited to the purpose of dealing with such estate in accordance with the provisions of the Army and Air Force (Disposal of Private Property) Act, 1950, or, as the case may be, the Navy Act, 1957. 40 of 1950.
62 of 1957.
46 of 1950.
45 of 1950.

Act not to affect Army and Air Force (Disposal of Private Property) Act, 1950, or Navy Act, 1957. [s. 15.]

59. Nothing in this Act shall be deemed to affect the provisions of the Army and Air Force (Disposal of Private Property) Act, 1950, or the Navy Act, 1957. 40 of 1950.
62 of 1957.

of 1908. 60. Nothing in this Act shall be deemed to affect the provisions of the Indian Registration Act, 1908. Saving of provisions of Indian Registration Act, 1908. [s. 59.]

61. (1) The Central Government may, by notification in the Official Gazette, make rules as to the terms and conditions on which letters of administration may be granted to Consular Officers under section 56. Power of Central Government to make rules. [s. 57, part.]

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days, which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

62. (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act, and for regulating the proceedings of the Administrator-General. Power of State Government to make rules. [s. 50.]

(2) In particular, and without prejudice to the generality of the foregoing Power, such rules may provide for—

(a) the accounts to be kept by the Administrator-General and the audit and inspection thereof;

(b) the safe custody, deposit and investment of assets and securities which come into the hands of the Administrator-General;

(c) the remittance of sums of money in the hands of the Administrator-General in cases in which such remittances are required;

(d) subject to the provisions of this Act, the fees to be paid under this Act and the collection and accounting for any such fees;

(e) the statements, schedules and other documents to be submitted to the State Government or to any other authority by the Administrator-General, and the publication thereof;

(f) the realization of the cost of preparing any such statements, schedules or other documents;

(g) the manner in which and the person by whom the costs of and incidental to any audit under the provisions of this Act are to be determined and defrayed;

(h) the manner in which summonses issued under this Act are to be served and the payment of the expenses of any person summoned or examined under the provisions of this Act, and of any expenditure incidental to such examination; and

(i) any other matter which is required to be, or may be, prescribed under this Act.

Repeal.
[New]

63. (1) The Administrator-General's Act, 1913, is 3 of 1913. hereby repealed.

(2) Without prejudice to the generality of the provisions of the General Clauses Act, 1897, relating to the effect of repeals, the repeal effected by this section shall not affect the incorporation of any person holding the office of Administrator-General at the commencement of this Act.¹ 10 of 1897

(3) Notwithstanding anything contained in this section, the provisions of section 59B of the Administrator-General's Act, 1913, shall continue to apply as if that Act had not been repealed. 3 of 1913.

¹Cf. section 656, Companies Act, 1956, (1 of 1956).

APPENDIX II

Table showing the provision in the existing Act and the corresponding provision, if any, in Appendix I.

Existing provision	Corresponding provision, if any, in Appendix I
1	2
Section 1	s. 1
Section 2 (1)	s. 2 (a)
Section 2(2)	Omitted
Section 2(3)	Omitted
Section 2(4)	Omitted
Section 2 (5)	s.2 (b)
Section 2 (6)	s. 2 (c)
Section 2 (7) (Repealed)
Section 2 (8)	s. 2 (d)
Section 2 (9) (10) and (11) (Repealed)
Section 2 (12)	Omitted
Section 2(13) (Repealed)
Section 3	s. 3
Section 4	s. 4
Section 5	s. 5
Section 6	s. 6
Section 7	s. 7
Section 8	s. 8
Section 9	s. 9
Section 10	Omitted

Existing provision	Corresponding provision, if any, in Appendix I
1	2
Section 11	s. 10
Section 12	s. 11
Section 13	s. 12
Section 14	s. 13
Section 15	s. 59
Section 16	s. 57
Section 17	s. 58
Section 18	s. 14
Section 19	s. 15
Section 20	s. 16
Section 21	s. 17
Section 22	s. 18
Section 23	s. 19
Section 24	s. 20
Section 25	s. 22
Section 26	s. 23
Section 27	s. 24
Section 28	s. 25
Section 29 (1)	s. 26
Section 29 (2)	s. 27
Section 29 (3)	s. 28
Section 30	s. 48
Section 31, main para, part	s. 29 (1)
Section 31, main para, part	s. 29 (2)
Section 31, proviso	s. 29 (3)

Existing provision	Corresponding provision, if any, in Appendix I
1	2
Section 32	s. 30
Section 33	s. 31
Section 34	s. 32
Section 35	s. 33
Section 36	s. 34
Section 37	s. 36
Section 38	s. 37
Section 39	s. 38
Section 40	s. 39
Section 41	s. 40
Section 42	s. 41
Section 43	s. 42
Section 44	s. 43
Section 45	s. 44
Section 46	s. 45
Section 47	s. 46
Section 48	s. 47
Section 49	s. 49
Section 50	s. 62
Section 51	s. 50
Section 52	s. 51
Section 53	s. 52
Section 54	Omitted
Section 55 (1)	s. 53
Section 55 (2)	s. 54

Existing provision	Corresponding provision, if any, in Appendix I
1	2
Section 56	s. 55
Section 57, part	s. 56
Section 57, part	s. 61
Section 58 (Repealed)
Section 59	s. 60
Section 59A	Omitted
Section 59B	Omitted
Section 60 (Repealed)

APPENDIX III

SUGGESTIONS IN RESPECT OF OTHER ACTS

The Indian Succession Act, 1925.—The question of incorporating a provision on the lines of section 54 of the Administrator-General's Act, 1913; in the Indian Succession Act may be considered.¹

¹See the body of the Report, discussion relating to section 54, Administrator-General's Act.